

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of WorldCom, Inc.)	
)	CC Docket No. 94-129
Petition for Declaratory Ruling that West)	
Virginia's Definition of Customer of Record)	
Is Inconsistent with the FCC's Rules)	

REPLY COMMENTS OF VERIZON WEST VIRGINIA

The rule adopted by the West Virginia Public Service Commission ("West Virginia PSC") that permits only the "customer of record" to verify carrier changes is inconsistent with the governing federal rule and would frustrate federal policy objectives. Accordingly, absent action by the West Virginia PSC to correct its rule, this Commission should preempt the state rule. In light of the pending proceeding before the West Virginia PSC, however, Verizon agrees with AT&T and Sprint that the West Virginia PSC should be afforded a reasonable period of time to correct this error on its own. The FCC should therefore issue a temporary stay of this proceeding to allow the West Virginia PSC to address this issue and not take any action on MCI's preemption petition at this time.

I. Preemption of the West Virginia PSC's Use of "Customer of Record" Is Warranted.

On its merits, the preemption issue here is simple. Under West Virginia PSC Rule 15 CSR 6, 2.8(b), only the "customer of record" may verify a switch in local exchange carriers or presubscribed interexchange carriers providing intrastate toll service. That is, only the person whose name appears on the telephone bill may make those changes in service. Not a spouse. Not a parent living in the home. Not even someone expressly authorized by the homeowner.

In short, because the West Virginia PSC has unreasonably limited consumer authority to switch local and intrastate toll carriers to the “customer of record,” the FCC should preempt the West Virginia PSC rule as contrary to the federal definition of “subscriber” and federal policy objectives.

II. The FCC Should Temporarily Stay Any Preemption Order While the West Virginia PSC Considers this Issue.

Although the West Virginia PSC has unreasonably limited consumers’ ability to manage telecommunications services, the FCC should issue an order staying this proceeding for a reasonable period of time while the West Virginia PSC considers an AT&T petition on the same issue.² The AT&T petition, filed with the West Virginia PSC on April 14, 2004, asks for a declaration that the term “subscriber” as used in West Virginia Code § 24-2E-1 et seq. and Rule 2.8 of the West Virginia PSC’s Telephone Rules, which is elsewhere defined to include “customer,” include any persons that assert “apparent authority” to request a change in

Consumers’ Long Distance Carriers, Third Report and Order and Second Order on Reconsideration, CC Docket No. 94-129, 15 FCC Rcd 15996, 16020, ¶ 48 (2000).

² There is FCC precedence for a stay of a pending federal petition when a state commission has initiated a proceeding that would address the issues raised in the federal docket. See, e.g., *In the Matter of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 et al., 17 FCC Rcd. 27039, 27049, ¶ 18 (2002) (stating that, “as a practical matter and matter of comity,” the FCC would “defer to the Virginia Commission on performance issues” because the Virginia Commission was actively considering the approval of a remedy plan and because “there is no present need for [the FCC] to ‘retrace the steps’ of the Virginia Collaborative and Virginia Commission”).

telecommunications service.³ This clarification, according to AT&T, would correct any deficiencies in the West Virginia PSC's use of the term "customer of record."⁴ Verizon agrees.

The FCC should not act on MCI's petition right now. An FCC stay order is appropriate because, as the West Virginia PSC has stated, "both causes of action seek virtually the same objective, that being a change in the WV definition of 'customer,' currently applied as the individual(s) or entity, whose name is on the account or anyone legally authorized to represent such individuals or entity." An administrative hearing on the AT&T petition is currently scheduled for August 11, 2004, and the administrative law judge is scheduled to release an order on or before November 10, 2004. Any exceptions are to be filed with the West Virginia PSC by November 30, 2004. The West Virginia PSC specifically states, however, that resolution may take longer than nine months.⁵ In light of this representation, Verizon reserves the right to ask the FCC to lift any stay of MCI's preemption petition if the West Virginia PSC does not timely resolve AT&T's petition.

Conclusion

For the foregoing reasons, Verizon respectfully asks the FCC to issue an order staying MCI's preemption petition for a reasonable period of time so that the West Virginia PSC may resolve AT&T's pending request that the term "customer of record" be modified to include persons with "apparent authority." Verizon reserves the right to ask the FCC to lift the stay if the

³ *In the Matter of Petition of AT&T Communications of West Virginia, Inc. for a Declaratory Ruling to Enhance Consumers' Ability to Obtain Telephone Services in a Commercially Reasonable, Efficient and Convenient Manner*, Petition for Declaratory Ruling, Case No. 04-0555-T-PC (filed April 14, 2004) (Exhibit A, AT&T Comments in MCI petition).

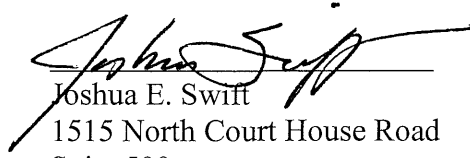
⁴ *Id.*

⁵ West Virginia Public Service Commission Motion to Hold Proceeding in Abeyance at 4 (June 10, 2004)

West Virginia PSC does not timely resolve the AT&T petition in a manner that addresses Verizon's preemption concerns.

Respectfully submitted,

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